UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,682	01/07/2005	Ralf Neuhaus	2002P06592WOUS	5183

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EXAMINER
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ART UNIT	PAPER NUMBER
4177	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 January 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>12-31</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>12-31</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>01/07/2005</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 08-06)   **Office Action Summary**   Part of Paper No./Mail Date 20090107

DETAILED ACTION

1.   The Examiner acknowledges the preliminary amendment filed January 7,

2005, wherein claims 1-11 were cancelled and claims 12-31 were added.

Claim Objections

2.   Claims 17 and 30 are objected to because of the following informalities:

Each of these claims uses the term safety that was not used within the

specification. Based on the failsafe comment within the specification the

Examiner interprets safety to mean failover or redundancy. Appropriate

correction is required.

3.   Claims 12 and 29 are objected to because each lacks the clarity of using a

colon after the word comprising.

4.   Applicant is advised that should claim 26 be found allowable, claim 26 will

be objected to under 37 CFR 1.75 as being a substantial duplicate thereof.

When two claims in an application are duplicates or else are so close in content

that they both cover the same thing, despite a slight difference in wording, it is

proper after allowing one claim to object to the other as being a substantial

duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 101

5.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or
> composition of matter, or any new and useful improvement thereof, may obtain a patent
> therefor, subject to the conditions and requirements of this title.

6.   Claims 29-31 are rejected under 35 U.S.C. 101 because the claimed
invention is directed to non-statutory subject matter. The claim is directed to a
judicial exception in the form of an abstract idea (i.e. computer program) for
resource selection. Neither a physical transformation nor any useful, concrete
and tangible result is found as no real world use is found as the process recited
in these claims are not associated to any physical devices. Appropriate
correction/clarification requested.

Claim Rejections - 35 USC § 112

7.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

8.   Claims 13-14, 20 and 29-31 are rejected under 35 U.S.C. 112, second
paragraph, as being indefinite for failing to particularly point out and distinctly
claim the subject matter which applicant regards as the invention.

9.   Claims 13-14 and 20 are indefinite because it is unclear how these claims
further limit the independent claim. In independent claim 12, Applicant states
"...a plurality of resources provide the communication components with a same
function". Therefore, these claims would appear to be redundant.

10.   Claim 29, the preamble states "a computer program adapted to operate
within a communication network, the communication network having
communication components that use a resource in the network", however the
body of a claim recites a database. It is unclear what is intended by the limitation
"database" as computer programs cannot contain a database. As such, the

claim is indefinite. Claims 30-31 are rejected due to dependent relationship with

claim 29.

11.   Claim 29, recites the use of "modules". The specification is unclear as to

whether the modules are hardware or software. The broadest reasonable

interpretation of the term "module" in light of the specification is intangible

software, not tangible hardware. Intangible software lacks structure that is

required to provide positively recited limitations into an apparatus claim. Claims

30-31 rejected due to dependent relationship with claim 29.

Claim Rejections - 35 USC § 102

12.   The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13.   Claims 12-27 and 29-31 are rejected under 35 U.S.C. 102(b) as being

anticipated by Dutta PGPub No. 20020073204.

    Claim 12: (new) A method for selecting resources in a communication

network, the network having communication components which use the

resources in the network, a plurality of resources provide the communication

components with a same function, comprising (Dutta, paragraphs 25-26; Dutta

provides communications links [network] between various devices

[communications components] and computers [plurality of resources] connected together within distributed data processing system).

determining and storing a function and a resource performance-statement about by the communication component; (Dutta, paragraphs 64-65; Dutta discloses collecting performance information).

storing resource-specific information in a database if a resource is being used by the communication component; and (Dutta, paragraphs 6-7 and 41; Dutta discloses lists and databases for the exchange of information about and between nodes including the peer nodes with which the user's node has already established a connection or session [resource is being used by the communication component]).

selecting the resource based on the resource-specific information and statistical information about the previous use of this resource. (Dutta, paragraphs 49-50 and 59; the previous use of this resource and statistical information is received/distributed to other components and available for determining which resource to select).

Claim 13: (new) The method as claimed in claim 12, wherein the function is the functionality of the resource. (See 112 rejections above. Claim 13 is rejected on the same basis as claim 12).

Claim 14: (new) The method as claimed in claim 12, wherein the function is the functionality of the component. (See 112 rejections above. Claim 14 is rejected on the same basis as claim 12).

Claim 15: (new) The method as claimed in claim 12, wherein the resource-specific information includes statistically evaluated information sent by the resource. (Dutta, paragraphs 49-50 and 59; the previous use of this resource and statistical information is received/distributed by the resource and available for determining which resource to select).

Claim 16: (new) The method as claimed in claim 12, wherein the resource-specific information includes reliability information of the resource. (Dutta, paragraph 57; Dutta discloses that the data traffic on the peer-to-peer network can be reduced [cost] and the connections can be optimized [reliability/safety]).

Claim 17: (new) The method as claimed in claim 12, wherein the resource-specific information includes safety information of the resource. (Dutta, paragraphs33-34; Dutta describes the resource as being able to be both a client and a server. Clients and servers that cannot reach an intended resource will choose the next available resource).

Claim 18: (new) The method as claimed in claim 12, wherein the resource-specific information includes availability information of the resource. (Dutta, paragraph 37; The provision of information between the communications components is determined based on availability of the resource).

Claim 19: (new) The method as claimed in claim 12, wherein the resource-specific information can be provided to other communication components. (Dutta, paragraphs 32-33; Dutta discloses data [resource information] traffic between communication components).

Claim 20: (new) The method as claimed in claim 12, wherein the resource
are the useable services of communication components. (See 112 rejections
above. Claim 20 is rejected on the same basis as claim 12).

Claim 21: (new) The method as claimed in claim 12, wherein the
communication component has a search function for determining the address of
resources of further communication components. (Dutta, paragraphs 6-7; Dutta
describes a list of addresses of peer nodes).

Claim 22: (new) The method as claimed in claim 12, wherein a reaction
time of the resource is taken into account for the statement. (Dutta, paragraph
35; Dutta uses a protocol that takes into account the speed of the connection
[reaction time]).

Claim 23: (new) The method as claimed in claim 12, wherein a present
utilization level of the resource is taken into account for the statement. (Dutta,
paragraph 59; Dutta discloses tracking actual usage [utilization level of the
resource] and connection statistics and then report the information).

Claim 24: (new) The method as claimed in claim 12, wherein a remaining
capacity of the resource is taken into account for the statement. (Dutta,
paragraph 59 and 64; Dutta discloses tracking actual usage [utilization level of
the resource] and connection statistics and then reports the information. Dutta
also discloses determining maximum connections and performance issues based
on reaching capacity of connections [capacity of the resource]).

Claim 25: The method as claimed in claim 12, wherein if the resource
being used by the communication component fails then the communication

component selects the next available resource with the same function for further

use. (Dutta, paragraphs 64-65; Dutta describes determining if the node

[communication component] is close to its maximum limit of concurrent

connections. Based on the fan out method of communication requests a

communications component may select another available resource).

    Claim 26: (new) The method as claimed in claim 12, wherein if the

resource being used by the communication component fails then the

communication component selects the next available resource with the same

function for further use. (Claim 26 is the same as claim 25. Therefore, Claim 26

is also rejected under the same rejection as claim 25 above).

    Claim 27: (new) The method as claimed in claim 12, further comprising

ascertaining resource data after the communication component has been turned

on, the resource data selected from the group consisting of the functions, the

statements and a combination thereof. (Dutta, paragraph 11; Dutta describes

collection and sharing of node characterizing data [resource data] associated

with a node connected to the target node [i.e. after the communications

component has been turned on]).

    Claim 29: (new) A computer program adapted to operate within a

communication network, the communication network having communication

components that use a resource in the network, comprising (Dutta, paragraph 77;

Dutta describes that the method of resource selection could be performed by a

computer program stored on an appropriate medium)

a database including information about the resource; (Dutta, paragraphs 39 and 44-45; Dutta discloses having a database that stores information about the resource).

a module for finding an address of further communication components; (Dutta, paragraph 37; The provision of information between the communications components is determined based on availability of the resource).

a module for checking an availability of the resource and for ascertaining a performance of the resource; (Dutta, paragraph 64; Dutta discloses ascertaining a performance of the resource to check if the resource is close to a maximum capacity for connections [availability]).

a module that stores resource-specific information about the use of the resource when the resource in the database is being used; and (Dutta, paragraphs 39 and 44-45; Dutta discloses having a database that stores information about the resource).

a module for selecting a resource based on resource data selected from the group consisting of the resource-specific information stored in the database and statistical information about the previous use of the resource. (Dutta, paragraphs 49-50 and 59; The previous use of this resource and statistical information is received/distributed by the resource).

Claim 30: (new) The computer program as claimed in claim 29, wherein the resource-specific information includes reliability, cost, and safety information. (Dutta, paragraph 57; Dutta discloses that the data traffic on the peer-to-peer

network can be reduced [cost] and the connections can be optimized

[reliability/safety]).

Claim 31: (new) The computer program as claimed in claim 29, wherein

the statistical information is received from another component. (Dutta,

paragraphs 49-50 and 59; the previous use of this resource and statistical

information is received from other components).

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to
> be patented and the prior art are such that the subject matter as a whole would have been
> obvious at the time the invention was made to a person having ordinary skill in the art to which
> said subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.

15.   Claims 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Dutta PGPub No. 2002/0073204 as applied to claim 27 above and in view of

Jonas PGPub No 2002/0064147.

Dutta is silent about when resource data is collected.

Claim 28: (new) The method as claimed in claim 27, wherein the resource

data is ascertained at stipulated time intervals. (Jonas, paragraph 39; Jonas

describes the periodic [stipulated time intervals] mapping of resources [resource

data]).

It would have been obvious to one skilled in the art at the time of the

invention to include the periodic collection of data within Dutta in view of Jonas,

because Jonas states that the information may be updated to note moved, added

or deleted resources. (paragraph 39)

Conclusion

16.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. WO-A-0077637 by Gateway also discloses

communications within a distributed network including selection of the best

resource based on performance information, redundancy and response time.

17.   Any inquiry concerning this communication or earlier communications from

the examiner should be directed to LAURI HARRIS whose telephone number is

(571)270-7482. The examiner can normally be reached on Monday-Thursday

7:30-5:00.

18.   If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, Sam Yao can be reached on 571-272-1224. The fax

phone number for the organization where this application or proceeding is

assigned is 571-273-8300.

19.   Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

for published applications may be obtained from either Private PAIR or Public

PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free). If you would like assistance from a USPTO Customer Service

Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

/LH/

        /Sam Chuan C. Yao/
        Supervisory Patent Examiner, Art Unit 4111